

December 4, 1996

OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON

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DECISION ON APPEAL OF THRESHOLD DETERMINATION.

SUBJECT: Department of Development and Environmental Services File No. L95P0011

BENSON PLACE  
Threshold Determination Appeal

Location: Between 108th Avenue Southeast and 112th Avenue Southeast  
(if extended), and Southeast 214th Street and Southeast 216th  
Street (if extended)

Owner/Developer: William Goodwin  
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Phone (206) 852-4664

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SUMMARY OF RECOMMENDATIONS:

Division's Preliminary:	Deny the Appeals
Division's Final:	Deny the Appeals
Examiner:	Deny the Appeals

PRELIMINARY MATTERS:

Application or petition submitted: June 19, 1995

Notice of appeal received by Examiner: September 4, 1996

Statement of appeal received by Examiner: September 4, 1996

#### EXAMINER PROCEEDINGS:

Pre-hearing Conference: September 26, 1996

Hearing Opened: November 12, 1996

Hearing Closed: November 15, 1996

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

#### ISSUES ADDRESSED:

- Surface water and drainage
- Traffic impacts
- Wetlands
- Wildlife habitat
- Recreational facilities

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### FINDINGS:

1. On June 19, 1995, William Goodwin filed a preliminary plat application to subdivide 10.7 acres into 37 lots plus a future development tract. The property is located east of the City of Kent within an already developed neighborhood lying east of Benson Highway (SR 515) and south of Southeast 214th Street. A mitigated determination of nonsignificance ("MDNS") under the State Environmental Policy Act was issued for the preliminary plat application on August 13, 1996. The MDNS imposed upon the development a restrictive surface water release rate plus a requirement to make certain improvements within the downstream drainage conveyance system designed to increase its capacity.
2. Timely appeals of the MDNS were filed by two neighborhood groups, one representing the Benson Hills neighborhood north of the proposed plat and the second representing the Twin Maples neighborhood lying to the proposal's south. Pursuant to a prehearing order issued September 30, 1996, the public hearings on the two SEPA appeals were consolidated with the public hearing on the preliminary plat application. The consolidated hearings opened on November 12, 1996, included an evening meeting in the community held at Springbrook Elementary School on November 14, 1996, and concluded on November 15, 1996. The hearing record was held open to receive additional information on proposed staff conditions.
3. As noted within the prehearing order, the substantive SEPA issues raised by the two neighborhood Appellant groups relate to matters which are regulated under existing King County Codes and subject to review as a matter of course within the preliminary plat hearing. Under such circumstances, the primary issue to be determined within a SEPA threshold determination appeal is whether, after the mitigations and requirements mandated by County codes are applied to the proposed plat, unmitigated adverse environmental impacts will still remain. The burden of proof to demonstrate the existence of probable unmitigated adverse environmental impacts rests with the SEPA Appellants.
4. The Appellants' burden of proof has not been met. While they and the other neighborhood residents who testified at the public hearing raised a number of important issues, the review of such issues can be adequately accommodated within the framework of the preliminary plat approval process.
5. Downstream drainage issues were a major concern of the Benson Hills residents and are the subject matter of the MDNS conditions. Since the mid-1980s chronic flooding has occurred on an annual basis in the vicinity of the intersection of Southeast 212th Street and 109th Avenue Southeast. Engineering studies indicate that the surface water drainage pipe system in this location has the capacity to convey less than the five-year frequency storm. During flooding

- events the roadways are inundated and neighborhood access is blocked, with yards and basements in the area flooded as well. The Benson Place Applicant has agreed to upgrade the undersized drainage pipes in the manner required by the MDNS, so that the system will accommodate a 25-year storm and greatly reduce the frequency of flooding. Therefore, the development of Benson Place will not cause significant adverse flooding impacts to occur downstream, but rather will reduce the impacts which now result from existing development.
6. With respect to runoff which enters the Benson Place property upstream from Twin Maples, the essential responsibility of the Applicant is to avoid creating restrictions or blockages which will impede existing flows through the property. Here again, under the provisions of the County's Surface Water Design Manual, capacity to convey the 25-year frequency storm is required. The preliminary plat approval will mandate that Surface Water Management Division ("SWM") conveyance requirements be met; therefore Benson Place will not have an adverse impact on the flooding conditions experienced by upstream properties.
  7. Within the area of traffic impacts, Benson Place roads will not connect south into Twin Maples, and its development will have no traffic impact on this neighborhood. While existing traffic problems experienced by Twin Maples residents may require resolution, no remedial duty can be legally imposed upon this Applicant.
  8. As presently proposed, the sole road access to Benson Place will be via 109th Avenue Southeast, which outlets in a northeasterly direction to Southeast 212th Street and the Benson Highway. While there are issues relating to sole access which will require discussion within the preliminary plat report, such issues are primarily ones of policy and are not dependent upon a finding of significant adverse environmental impacts. After the development of Benson Place, the intersection of SR 515 and Southeast 212th Street will operate at Level of Service E, which, while not optimal, is considered an acceptable level of service under the King County Integrated Transportation Program.
  9. Although there are safety issues associated with this intersection which will also be discussed in the plat report, recent data does not support a finding that this location has a high accident history. Accordingly, a finding of significant adverse safety impacts resulting from plat development is not warranted. Moreover, the preliminary plat approval will require that the Applicant provide an emergency access from the plat to Benson Highway as an alternative route to the neighborhood should the SR 515/Southeast 212th Street intersection become blocked. Thus, while additional traffic from Benson Place will travel through the Southeast 212th/SR 515 intersection, plat development will reduce the actual risk that emergency vehicles will be unable to access the neighborhood.
  10. Allegations by Appellants of adverse impacts to the onsite wetland and its wildlife habitat are unsupported by the record. The Class 3 wetland is less than one-half acre in area and is already degraded by existing development patterns and historic agricultural uses. The wetland will be protected by a 25-foot undisturbed native vegetation buffer, except at its very northern end where road access requirements will necessitate a slight intrusion. Under county regulations such intrusion will be required to be mitigated. No evidence has been submitted that the wetland is a wildlife habitat of any importance.
  11. Two land use issues have also been raised within the SEPA appeal. The first concerns the project's impacts on recreational facilities. While it is generally acknowledged that this portion of the County is deficient in public park facilities, Benson Place itself will be required to provide an onsite recreational tract in excess of 14,000 square feet. This tract will not cure the recreational deficiency within the neighborhood as a whole, but it meets County requirements for a development of this size and will serve the recreational needs of residents of the new plat. Finally, questions were raised as to whether environmental impacts attributable to the Tract C reserve area should be evaluated at this stage. Since development is neither proposed nor approved for Tract C within the current preliminary approval, evaluation of Tract C impacts will be appropriate at such time that an application for its development is filed and actual impacts can be specifically identified. At that point it will be subject to full SEPA review.

#### CONCLUSIONS:

1. The basic standard to be applied to the review of a SEPA threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts actually considered, the decision of the SEPA official is

entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.

2. The SEPA record discloses the actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of this proposal. The Appellants have not met their burden of proof to demonstrate that the mitigated determination of nonsignificance is either contrary to law or inadequately supported by the record and therefore clearly erroneous.
3. Based on the record, the decision of the SEPA official is not clearly erroneous, is supported by the evidence of record and assures that there is no probability of significant adverse environmental impacts.

DECISION:

The appeals are DENIED.

ORDER:

This order constitutes that final King County mitigated determination of nonsignificance for the Benson Place preliminary plat application.

Mitigation under SEPA for this proposal includes the following conditions:

The existing downstream conveyance restriction at the Southeast 212th Street and 109th Avenue Southeast intersection shall be improved to contain the peak run-off rate for the 25-year design storm, and flows from the proposed Benson Place subdivision shall be limited, as follows:

1. Replace the 30 feet of 12 inch pipe crossing Southeast 212th Street from the southwest corner of the intersection with 24-inch smooth wall pipe.
2. Replace the three lengths of 18-inch diameter pipe (320 feet total) at the intersection and immediately downstream with 30-inch diameter smooth wall pipe.
3. Install a trash rack at the pipe inlet at the end of the existing swale located prior to the lowest length of existing 18-inch pipe.
4. Limit post-development detention release from Benson Place to the predevelopment 2-year peak runoff rate for 2-year events, to the predevelopment 10-year peak runoff rate for the 10-year event and to the predevelopment 25-year peak runoff for all storm events between the 25-year and 100-year levels. The detention volume must include an additional 30% factor of safety.

ORDERED this 4th day of December, 1996.

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Stafford L. Smith, Deputy  
King County Hearing Examiner

TRANSMITTED this 4th day of December, 1996, to the following parties and interested persons:

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Tom Koney, Metropolitan King County Council  
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Steve Townsend, DDES/LUSD  
Angelica Velasquez, DDES/LUSD  
Bruce Whittaker, DDES/LUSD, Engineering Review Section  
Paul Wozniak, DDES/LUSD

MINUTES OF THE NOVEMBER 12, 14 AND 15, 1996, PUBLIC HEARING ON DDES FILE NO.  
L95P0011 - BENSON PLACE SEPA APPEAL.

Stafford L. Smith was the Hearing Examiner in this proceeding. Participating at the hearing were Lanny Henoch, Richard Lowe, Angelica Velasquez, Jon Hansen, Paulette Norman, Steve Foley and Tom Bertek, representing the County; Shupe Holmberg, Joel Haggard, Dale Howell, Wayne Thorp, Lyle Magnuson, Joanne Whiteley, Robert Brock, Val Krieter, Richard Dobrowski, Craig Wallace, Dan Anderson, Robert Sjolín, Jim Morrison, Ernest Barlow, Nancy Terry, Elizabeth Stewart, Robin Bennett, Mike LaLime, Bonnie McLaughlin, Greg Vermillion, Anna Clements, Loren Orndorff, Carolyn Shelton, Jan Pazhouh, Vickie Erickson, Terry Gibson, Donald Walkup, Bettie Waits, and Kathleen Corea.

The following exhibits were offered and entered into the record November 12, 1996:

Exhibit No. 1	Department of Development and Environmental Services File No. L95P0011
Exhibit No. 2	Department of Development and Environmental Services Preliminary Report to the King County Hearing Examiner for the November 12, 1996 public hearing
Exhibit No. 3	Application, received June 19, 1995
Exhibit No. 4	Environmental Checklist, received June 19, 1995
Exhibit No. 5	Mitigated Determination of Non-Significance, issued August 20, 1996
Exhibit No. 6	Affidavit of Posting, received October 31, 1996
Exhibit No. 7	Revised preliminary plat map, received May 2, 1996
Exhibit No. 8	Land use map - Kroll maps 614 E & W
Exhibit No. 9	King County Assessor Maps - NE 1/4 and SE 1/4 of 08-22-05
Exhibit No. 10	Conceptual Drainage Plan by Baima & Holmberg, received May 2, 1996
Exhibit No. 11	Neighborhood Development Map by Baima & Holmberg, received November 8, 1995
Exhibit No. 12	Wetland Evaluation by Terra Associations, Inc., dated November 3, 1995
Exhibit No. 13	Traffic Impact Analysis by Gibson Traffic Consultants, dated October 11, 1995
Exhibit No. 14	Supplemental Accident Analysis by Gibson Traffic Consultants, dated March 28, 1996
Exhibit No. 15	Follow-up Analysis/Responses to Appeal Comments on Traffic/Safety Issues by Gibson Traffic Consultants, dated October 24, 1996
Exhibit No. 16	Level 1 and 2 Downstream Analysis by Baima & Holmberg, dated October 25, 1995
Exhibit No. 17	SEPA appeal letter from Mr. & Mrs. Peel, et al. (the Twin Maples appeal), dated September 2, 1996
Exhibit No. 18	SEPA appeal letter from Mr. & Mrs. Shuman, et al. (the Benson Hills appeal), dated August 27, 1996
Exhibit No. 19	Letter from Don Walkup, Supervisor of Kent School District Transportation Department, dated November 5, 1996
Exhibit No. 20	Land Use Services Division file for Road Variance No. L95V0131
Exhibit No. 21	Land Use Services Division file for Road Variance L95V0044

Exhibit No. 22	Six copies of letter entitled "Twin Maples Community Letter of Concern 8/29/96" from six different parties
Exhibit No. 23	Letter from Mr. & Mrs. Barton, dated September 31, 1996
Exhibit No. 24	Letter from Robin Bennett and Paul Porter, dated September 3, 1996
Exhibit No. 25	Letter from Mark Correa, dated August 30, 1996
Exhibit No. 26	Letter from Richard Dobrowski, dated October 17, 1996
Exhibit No. 27	Letter from Nancy Wieland, dated August 29, 1996
Exhibit No. 28	Letter from Mr. & Mrs. Schuman, et al., dated September 5, 1996
Exhibit No. 29	Letter from Robert Marson, dated August 27, 1996
Exhibit No. 30	Letter from Mr. & Mrs. Orndorff, dated August 29, 1996
Exhibit No. 31	Letter from Mr. & Mrs. Schuman, received August 29, 1996
Exhibit No. 32	Letter from Mr. & Mrs. Shugarts, dated August 29, 1996
Exhibit No. 33	Letter from Steve Leetch, dated September 3, 1996
Exhibit No. 34	Letter from Mr. & Mrs. Lalime, received August 27, 1996
Exhibit No. 35	Letter from Raymond Kreman, dated August 26, 1996
Exhibit No. 36	Letter from Mr. & Mrs. Johnson, dated September 3, 1996
Exhibit No. 37	Letter from Mr. & Mrs. Keefer, dated August 27, 1996
Exhibit No. 38	Letter from Mr. & Mrs. Haw, dated August 29, 1996
Exhibit No. 39	Letter from Jack Gaines, dated August 28, 1996
Exhibit No. 40	Letter from Richard Dobrowski, dated August 27, 1996
Exhibit No. 41	Letter from Mr. & Mrs. Dorres, dated September 4, 1996
Exhibit No. 42	Letter from Robert Sjolín, dated August 16, 1996
Exhibit No. 43	Revised site plan, dated November 4, 1996
Exhibit No. 44	Revised drainage plan, dated October 28, 1996
Exhibit No. 45	Conceptual Downstream Drainage Plan, dated October 1, 1996
Exhibit No. 46	Map presented by Wayne Thorp during November 12, 1996 hearing, showing drainage problems in vicinity of proposed plat (oversize board)
Exhibit No. 47	Photos taken by Dale Howell showing flooding on his site from 1986 - 1996, mounted on oversize board
Exhibit No. 48	Written statement of Richard Dobrowski regarding traffic, presented November 12, 1996
Exhibit No. 49	Two (2) letters to Robert Josephson, WSDOT, dated October 9, 1996 and October 17, 1996, from neighborhood group
Exhibit No. 50	Slide photos of wetlands in vicinity of proposed plat, taken by Robert Brock
Exhibit No. 51	Alternate plan for park space, presented by Robert Brock November 12, 1996
Exhibit No. 52	Slide photos by Robert Brock showing space where he proposes a park

The following exhibits were offered and entered into the hearing record November 14, 1996:

Exhibit No. 53	Comment letters from Robert Armstrong, Barbara Miller and James Bunt
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The following exhibits were offered and entered into the hearing record November 15, 1996:

Exhibit No. 54	Letter dated November 14, 1996, from Robert Josephson (WSDOT) to Lanny Henoch
Exhibit No. 55	Packet of materials from Mr. Pazhouh (WSDOT)
Exhibit No. 56	Outline of Terry Gibson testimony
Exhibit No. 57	1985-95 Historical ADT Counts by Location Average Daily Traffic Volumes
Exhibit No. 58	Letter dated November 11, 1996, by Terry Gibson (Gibson Traffic Consultants) re Supplemental LOS Analysis at SR 515/SE 212th
Exhibit No. 59	Comment letters from Schurks and Wilsons
Exhibit No. 60	Correspondence between Walsh and KCDOT with attached petition
Exhibit No. 61	Appellant's outline of rebuttal
Exhibit No. 62	Capital Facilities Plan 1996-1997 through 2001-2002
Exhibit No. 63	Tax Lot No. 220 - Overview by W.C. Wallace
Exhibit No. 64	Variance findings by Tom Bertek
Exhibit No. 65	Plat map used to illustrate Haggard/Norman discussion

The following exhibits were offered and entered pursuant to administrative continuance:

Exhibit No. 66	Letter (and fax) dated November 20, 1996, from Lanny Henoch to Stafford Smith regarding final recommendation for subject plat
Exhibit No. 67	Fax received from Joel Haggard November 21, 1996, with responsive comments to Exhibit NO. 66, above.

SLS:daz  
sepa\l95\l95p0011.rpt